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Attorneys for defendant
Asset Acceptance, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH CONTRERAS, an individual,

Plaintiff,

VS.

HSBC CONSUMER LENDING USA,
dba BENEFICIAL;
ASSET ACCEPTANCE, LLC;
DOES 1 THROUGH 10,

Defendants.

CASE NO.: C 08-02849 EMC

**CERTIFICATE OF SERVICE OF
NOTICE TO ADVERSE PARTY
OF NOTICE OF REMOVAL**

1 I, Stephanie Schmitt, declare as follows:

2 I am over the age of 18 years and not a party to this action.

3 I am employed by the firm of Simmonds & Narita LLP, counsel of record for
4 defendant Asset Acceptance LLC. My business address is 44 Montgomery Street,
5 Suite 3010, San Francisco, California 94104, which is located in the city and county
6 where the mailing described below took place.

7 On June 10, 2008, I deposited in the United States Mail at San Francisco,
8 California, a copy of the Notice to Adverse Party of Removal dated June 6, 2008, a
9 copy of which is attached to this Certificate, to be delivered to the addressees below:

10 Irving L. Berg
11 The Berg Law Group
12 145 Town Center, PMB 493
Corte Madera, CA 94925
13 Counsel for Plaintiff

14 Manuel Alvarez, Jr.
15 Sonnenschein Nath & Rosenthal LLP
525 Market Street, 26th Floor
San Francisco, CA 94105
16 Counsel for defendant HSBC Consumer Lending USA

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed in San Francisco on this 10th day of June, 2008.

19
20
21
22 By: 

23 Stephanie Schmitt
24
25
26
27
28

1 TOMIO B. NARITA (SBN 156576)
2 ROBIN M. BOWEN (SBN 230309)
3 SIMMONDS & NARITA LLP
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5 San Francisco, CA 94104-4816
Telephone: (415) 283-1000
Facsimile: (415) 352-2625
tnarita@snllp.com
rbowen@snllp.com

6 Attorneys for defendant
7 Asset Acceptance, LLC

8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 LIMITED CIVIL

12 ELIZABETH CONTRERAS, an
13 individual,

14 Plaintiff,

15 vs.

16 HSBC CONSUMER LENDING USA,
17 dba BENEFICIAL;
ASSET ACCEPTANCE, LLC;
DOES 1 THROUGH 10,

18 Defendants.

19) CASE NO.: CGC 08-474587

20) **NOTICE TO ADVERSE PARTY
21) OF REMOVAL**

22
23
24
25
26
27
28

1 TO PLAINTIFF ELIZABETH CONTRERAS AND HER ATTORNEYS OF
2 RECORD:

3 PLEASE TAKE NOTICE that a Notice of Removal of this action was filed
4 in the United States District Court for the Northern District of California on June 6,
5 2008 under Federal Court case number C 08-02849 EMC. A copy of the Notice of
6 Removal is attached hereto as **Exhibit A** and is served and filed herewith.

7
8 DATED: June 10, 2008

SIMMONDS & NARITA LLP
TOMIO B. NARITA
JEFFREY A. TOPOR
ROBIN M. BOWEN

9
10
11 By: _____
12 Jeffrey A. Topor
13 Attorneys for defendant
14 Asset Acceptance, LLC

PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816.

I am readily familiar with the business practices of my employer, Simmonds & Narita LLP, for the collection and processing of correspondence by mail with the United States Postal Service and that said correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On this date, I served a copy of the following document:

1) NOTICE TO ADVERSE PARTY OF REMOVAL

by causing such document to be placed in a sealed envelope for collection and delivery by the United States Postal Service to the addressees indicated below:

VIA U.S. MAIL

Irving L. Berg
The Berg Law Group
145 Town Center, PMB 493
Corte Madera, CA 94925
Counsel for Plaintiff

Manuel Alvarez, Jr.
Sonnenschein Nath & Rosenthal LLP
525 Market Street, 26th Floor
San Francisco, CA 94105
Counsel for defendant HSBC Consumer Lending USA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on this 10th day of June, 2008.

Stephanie Schmitt

Exhibit A

ORIGINAL
FILED
JUN 6 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 TOMIO B. NARITA (SBN 156576)
2 JEFFREY A. TOPOR (SBN 195545)
3 ROBIN M. BOWEN (SBN 230309)
4 SIMMONDS & NARITA LLP
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7 Attorneys for defendant
8 Asset Acceptance, LLC

E-filing

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

EMC

12
13 ELIZABETH CONTRERAS, an
individual,

14 Plaintiff,

15 vs.

16 HSBC CONSUMER LENDING USA,
17 dba BENEFICIAL;
18 ASSET ACCEPTANCE, LLC;
19 DOES 1 THROUGH 10,

Defendants.

CV CASE NO.: 08-2849

NOTICE OF REMOVAL

BY FAX

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Asset Acceptance, LLC ("Asset")
 3 hereby removes to this Court the state court action described below.

4 1. On April 24, 2008, a complaint was filed against Asset and HSBC
 5 Consumer Lending USA, dba Beneficial, by plaintiff Elizabeth Contreras
 6 ("Plaintiff") in an action pending in the Superior Court of the State of California in
 7 and for the County of San Francisco, entitled *Elizabeth Contreras v. HSBC*
 8 *Consumer Lending, dba Beneficial et al.*, Case No. CGC 08 474587. A copy of the
 9 state court complaint ("Complaint") is attached hereto as **Exhibit A**.

10 2. This removal petition is timely under 28 U.S.C. § 1446(b) because the
 11 Complaint was first received by Asset on May 9, 2008.

12 **JURISDICTION**

13 3. This action is a civil action of which this Court has original
 14 jurisdiction under 28 U.S.C. § 1331 and that may be removed to this Court by
 15 Asset pursuant to the provisions of 28 U.S.C. § 1441(b) in that the Complaint
 16 asserts federal claims against Asset allegedly arising under 15 U.S.C. § 1692 *et seq.*
 17 (the Fair Debt Collection Practices Act).

18 **VENUE**

19 4. The Complaint was filed in the Superior Court of the State of
 20 California, County of San Francisco. Therefore, venue in the San Francisco
 21 Division or the Oakland Division of this District is proper. *See* Local Rule 3-2(d)
 22 (stating "all civil actions which arise in the counties of Alameda . . . shall be
 23 assigned to the San Francisco Division or the Oakland Division"); 28 U.S.C. §
 24 1441(a) (providing for removal "to the district court of the United States for the
 25 district and division embracing the place" where the state court action is pending).

26 //

1 5. Asset is represented by the undersigned. Defendant HSBC Consumer
2 Lending USA dba Beneficial consents to this removal. *See* Defendant HSBC
3 Consumer Lending USA's Consent to Removal filed herewith. Thus, all
4 defendants consent to the removal of this action.

6 || DATED: June 6, 2008

SIMMONDS & NARITA LLP
TOMIO B. NARITA
JEFFREY A. TOPOR
ROBIN M. BOWEN

By:

Jeffrey R. Topor
Attorneys for defendant
Asset Acceptance, LEC

Exhibit A

1 Irving L. Berg (SBN 36273)
2 THE BERG LAW GROUP
3 145 Town Center, PMB 493
Corte Madera, California 94925
(415) 924-0742
(415) 891-8208 (Fax)
4 irvberg@comcast.net (e-mail)

ENDORSED
FILED

San Francisco County Superior Court

APR 24 2008

GORDON PARK-LI, Clerk
PARAM NATT

5 ATTORNEY FOR PLAINTIFF

AUG 22 2008 - 10 AM

Deputy Clerk

6 **DEPARTMENT 212**

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 LIMITED CIVIL

10 11 ELIZABETH CONTRERAS, an individual, Case No.: **C 6 C - 08 - 474587**

12 Plaintiff,

13 v. COMPLAINT SEEKING DAMAGES FOR
14 HSBC CONSUMER LENDING USA, dba UNLAWFUL DEBT COLLECTION
BENEFICIAL; ASSET ACCEPTANCE LLC; PRACTICES
DOES 1 THROUGH 10, DEMAND FOR JURY TRIAL

15 Defendants. /

16 I. INTRODUCTION

17 1. Plaintiff, ELIZABETH CONTRERAS ("Ms. Contreras"), is a resident of San
18 Francisco County. Plaintiff brings this lawsuit seeking damages from Defendants HSBC
19 CONSUMER LENDING USA dba BENEFICIAL ("Beneficial"), and ASSET ACCEPTANCE
20 LLC ("Asset"), for their violation of the California and Federal laws regulating consumer debt
21 collection practices.

22 2. The Defendants, Beneficial and Asset, are debt collectors as defined at Cal. Civ.
23 Code § 1788.2(c), which provides:

24 (c) The term "debt collector" means any person who, in the
25 ordinary course of business, regularly, on behalf of himself or
26 herself or others, engages in debt collection.

27 3. The Defendants are also debt collectors under the federal law, 15 U.S.C. §
28 1692a(6).

COMPLAINT SEEKING DAMAGES

CONTRERAS V. HSBC CONSUMER
LENDING USA dba BENEFICIAL

1 4 The California law, known as the Rosenthal Fair Debt Collection Practices Act, is
 2 at Cal. Civ. Code § 1788, *et seq.* The California law incorporates provisions of the federal Fair
 3 Debt Collection Practices Act ("FDCPA"), pursuant to Cal. Civ. Code § 1788.17, which states:

4 **....every debt collector collecting or attempting to collect a
 consumer debt shall comply with the provisions of Sections
 1692b to 1692j.... of Title 15 of the United States Code [i.e., the
 FDCPA].**

5 5. Plaintiff, by this action, seeks statutory damages, attorney's fees and costs.

6 **II. JURISDICTION AND VENUE**

7 6. Jurisdiction in this court is conferred by 15 U.S.C. § 1692k(d).

8 7. Venue is proper in this county because Defendants do business in this county, and
 9 the collection communications were received in this county.

10 **III. PARTIES**

11 8. Plaintiff, Elizabeth Contreras, is a single woman who resides in San Francisco,
 12 California.

13 9. Defendant Beneficial has a principal office at c/o HSBC Finance Corporation,
 14 2700 Sanders Road, Prospect Heights, IL 60070. Beneficial is a debt collector as defined at Cal.
 15 Civ. Code § 1788.2. Beneficial is amenable to service of process on an officer at its principal
 16 office.

17 10. Defendant Asset receives its mail for its principal office at P. O. Box 2036,
 18 Warren, MI 48093-7132. Asset is a debt collector as defined by 15 U.S.C. § 1692a(6), and as
 19 defined by Cal. Civ. Code § 1788.2.

20 11. Plaintiff is ignorant of the true names or capacities of the defendants sued herein
 21 under the fictitious names of DOE ONE through TEN inclusive.

22 12. Each of the fictitiously named Doe Defendants is responsible in some manner for
 23 the wrongdoing alleged herein, and is liable for the damages recoverable by Plaintiff. Each of
 24 the Defendants was acting as agent or employee for the others. Plaintiff will seek leave of the
 25 court to name the Doe defendants when their true names and identities are ascertained.

26 13. Defendants Beneficial and Asset are hereafter sometimes referred to collectively

1 as "Defendants."

2 **IV. FACTUAL ALLEGATIONS**

3 14. Some time ago, Plaintiff obtained a credit account from Defendant Beneficial.

4 15. Plaintiff used the account for purchase of consumer goods for Plaintiff's personal
5 and household needs.

6 16. Plaintiff was unable to make payment on the account because of financial
7 setbacks.

8 17. Plaintiff sought legal representation to help Plaintiff through this bleak financial
9 period, and to deal with the unrelenting and stressful demands of Plaintiff's creditors and their
10 collection agents. Plaintiff hired attorney Irving L. Berg for legal representation.

11 18. Plaintiff was advised by the attorney that, once Plaintiff's creditors and their
12 collection agents were advised of attorney representation, the law required that the creditors and
13 their collection agents must leave Plaintiff alone and deal with the attorney.

14 19. On October 9, 2007, Plaintiff's attorney sent Defendant Beneficial a letter
15 advising of his representation of Plaintiff. Exhibit A is a copy of the letter sent to three offices of
16 Defendant Beneficial. The letter states, among other things:

17 **The captioned consumer is a client of mine. All
18 communications concerning my client's financial affairs,
19 including the captioned debt, and any other debts you claim
owed by my client shall hereafter be made to this office in
writing.**

20 20. Some date thereafter, Defendant Beneficial appointed Defendant Asset as its agent
21 to collect the alleged debt. Beneficial transferred and turned over to Defendant Asset Plaintiff's
22 account, including the letter of attorney representation (Exhibit A) and notes of Defendant
23 Beneficial's collection action taken against Plaintiff to collect the claim against Plaintiff.

24 21. On December 5, 2007, Defendant Asset, notwithstanding the notice of attorney
25 representation (Exhibit A), wrote Plaintiff directly, on its own letterhead, demanding payment of
26 the account. Exhibit B is a copy of the Asset letter.

27 22. Defendant Beneficial and its agent, Defendant Asset, are liable for sending a
28 collection letter, Exhibit B, to Plaintiff after notice of attorney representation. Defendants'
COMPLAINT SEEKING DAMAGES

conduct violates Cal. Civ. Code § 1788.14(c), which prohibits:

(c) Initiating communications other than statements of account, with the debtor with regard to the consumer debt, when the debt collector has been previously notified in writing by the debtor's attorney that the debtor is represented by such attorney with respect to the consumer debt and such notice includes the attorney's name and address and a request by such attorney that all communications regarding the consumer debt be addressed to such attorney, unless the attorney fails to answer correspondence, return telephone calls, or discuss the obligation in questions.

23. Said conduct further violates 15 U.S.C. § 1692c(a)(2), which states a debt collector may not communicate with a consumer without the consumer's permission:

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer....

CLAIM FOR RELIEF

24. Plaintiff incorporates by reference all of the foregoing paragraphs

25. Defendants Beneficial and Asset violate Cal. Civ. Code § 1788.14(c) and 15.

U.S.C. §§ 1692c(a)(2) by communicating with Plaintiff after notice of attorney representation

V. PRAYER

WHEREFORE, according to the remedies allowable under the California law and Federal law, as provided by Cal. Civ. Code § 1788.32:

The remedies provided herein are intended to be cumulative and are in addition to any other procedures, rights, or remedies under any other provision of law.

Plaintiff prays for damages as follows:

A. Statutory damages of \$2,000 as to Defendant Beneficial, pursuant to Cal. Civ. Code §§ 1788.30(b) and 15 U.S.C. § 1692k;

B. Statutory damages of \$2,000 as to Defendant Asset, pursuant to Cal. Civ. Code § 1788.30(b) and 15 U.S.C. § 1692k:

C. Statutory damages of \$6,000 as to the Doe Defendants, each Doe Defendant to pay its proportionate share.

1 D. Reasonable attorney's fees and costs, pursuant to Cal. Civ. Code § 1788.30 and 15
2 U.S.C. § 1692k(a)(3).

3 Dated: 4/21/08

4 /s/

5 Irving L. Berg
6 THE BERG LAW GROUP
7 145 Town Center, PMB 493
8 Corte Madera, California 94925
9 (415) 924-0742
10 (415) 891-8208 (Fax)

11 ATTORNEYS FOR PLAINTIFF

12 **JURY DEMAND**

13 Plaintiff demands trial by jury.

14 Dated: 4/21/08

15 /s/

16 Irving L. Berg

EXHIBIT A

THE BERG LAW GROUP
 ATTORNEYS AND COUNSELORS AT LAW
 145 Town Center, PMB 493
 Corte Madera, California 94925
 Phone: (415) 924-0742 Fax: (415) 891-8208
 e-mail irvberg@comcast.net

IRVING L. BERG, ESQ.

October 9, 2007

Beneficial Customer Services
 P. O. Box 8633
 Elmhurst, IL 60126

Beneficial Customer Service
 851 Van Ness Ave., Suite 2
 San Francisco, CA 94109

Re: Elizabeth Contreras
 Social Security No.: 617-98-9831
 Creditor: Beneficial

Beneficial Customer Service
 P. O. Box 8873
 Virginia Beach, VA 23450-8873

Notice of Attorney Representation
Invitation to Debt Settlement Proposal

Dear Sir or Madam:

The captioned consumer is a client of mine. My client is experiencing severe financial problems. My office has been retained to assist in resolving these problems. Consideration is being given to payment of selected debts, to the extent reasonable offers are received. I ask you to submit by facsimile, to my office facsimile number, (415) 891-8202, your bottom line pay-off proposal.

Keep in mind that all communications concerning my client's financial affairs, including the captioned debt, and any other debts you claim are owed by my client, shall hereafter be considered confidential and made only to my office.

My client's Social Security number is noted above. Should you have any question regarding the identification of my client, send your inquiry to the undersigned.

Keep in mind that, so long as my client is represented by my office, **California and federal law prohibit you from contacting my client, my client's employer, or my client's family regarding the debts. All inquiries regarding my client's financial affairs shall be directed to the undersigned.** In the unlikely event that the legal relationship with my client is terminated, you will be notified in writing. Please advise as to your direct facsimile number.

Sincerely,

Irving L. Berg
 ILB/rl

EXHIBIT B

replettterCD7.frm

Asset Acceptance LLC

Toll Free 800-398-8814 Ext.
LOCAL: 480-403-6400

LOCAL OFFICE: Phoenix, AZ

December 5, 2007

RE: HSBC CONSUMER LENDING USA

ORIGINAL ACCT#:
ASSET ACCEPTANCE LLC ACCT#:
BALANCE PAST DUE:
21181300625989
35509331
\$3321.87

CP
debt
Collar
for post

Dear ELIZABETH J CONTRERAS-

It is our pleasure to welcome you as a new customer of Asset Acceptance LLC. Your account with the above mentioned creditor has been purchased and is now owned by Asset Acceptance LLC. In order to insure proper credit for any payments it is necessary that all future payments and inquiries be made to:

ASSET ACCEPTANCE LLC
PO Box 2036
Warren, MI 48090-2036

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt and any information obtained will be used for that purpose.
Sincerely,

Sincerely,

PAUL NOLAN – Phone: Toll Free 800-398-8814 Ext.
Debt Collector
Asset Acceptance LLC

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

See Reverse Side for Important Information Regarding Your Privacy Rights.

***Detach | Open Readme | Add to Project

IONASSECH192008AC13

PO Box 2039
Winnipeg MB, **100000-0000**

ADDRESS SERVICE REQUESTED

Asset Acceptance LLC Account #: 35509331
Balance Past Due: \$3391.87

December 5, 2007

ASSET ACCEPTANCE LLC

#BWNHKKF
#0000000355093311# 0419451 0059581 35509331-8100
ELIZABETH J CONTRERAS
835 Offerrell St Apt 409
San Francisco CA 94108-9022